REMARKS

This is a full and timely response to the final Office Action of March 9, 1999, and Advisory Action of June 18, 1999. Upon entry of this Fourth Response, claims 1-21 and 23-49 remain pending in this application. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

In the latest Advisory Action, it is suggested for Applicant to copy a claim of the *Ross* reference to invoke an interference. The Examiner is thanked for this suggestion. However, Applicant has recently developed evidence showing completion of the present invention, as claimed in the present application, prior to the effective filing date of *Ross*. As such, Applicant believes *Ross* is an improper prior art reference and that *Ross*, therefore, should be removed as a prior art reference without invoking an interference.

To show completion of the present invention in the U.S. prior to the effective filing date of *Ross*, Exhibits A-G are submitted herewith pursuant to 37 C.F.R. §1.131. Exhibits A-G demonstrate a conception of the present invention and due diligence prior to the filing date of the present application. Applicant asserts that Exhibits E-G have been previously submitted along with the Third Response on June 9, 1999. Furthermore, Applicant also submits that Exhibits A, B, and D are related to Exhibit C and that the evidence provided in Exhibit C has only recently been developed. Therefore, Exhibits A-D have been submitted for the first time with this response. Since the evidence provided by Exhibit C has been only recently developed, Applicant respectfully asserts that Exhibits A-D should be considered as timely filed and respectfully requests that the Examiner consider Exhibits A-D (in addition to Exhibits E-G, which have previously been submitted).

Response to §102(e) Rejections

An applicant may overcome a prior art reference that is prior art under 35 U.S.C. §102(a) or 102(e) by establishing "conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application." 37 C.F.R. §1.131.

Claims 1-14, 27, 28, 31-35, 37-41, 43-47, and 49

Claims 1-14, 27, 28, 31-35, 37-41, 43-47, and 49 presently stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 5,648,770 (the '770 patent) and, in the alternative, U.S. Patent No. 5,444,444 (the '444 patent). However, Applicant submits that the present invention, as defined by claims 1-14, 27, 28, 31-35, 37-41, 43-47, and 49, was completed in this country prior to the effective filing date of the '770 and '444 patents pursuant to 37 C.F.R. §1.131, in that the invention was conceived of prior to the effective filing date of the '770 and '444 patents and due diligence existed from prior to the effective filing date of the '770 and '444 patents to the effective filing date of the present invention.

In this regard, Applicant submits that the present application claims priority to U.S. Patent No. 5,400,020 and that the present invention, as defined by claims 1-14, 27, 28, 31-35, 37-41, 43-48, and 49, is supported by the 5,400,020 patent. Therefore, Applicant submits that the effective filing date of the '770 and '444 patents is May 14, 1993, and the effective filing date of the present invention, as claimed, is May 18, 1993, only four days after the effective filing date of the '770 and '444 patents.

Furthermore, Applicant submits that Exhibits A, B, and E-G show that the present invention, as defined in claims 1-14, 27, 28, 31-35, 37-41, 43-48, and 49, was conceived of prior to May 14, 1993. Note, in particular, that Exhibit B states that "(e)ach redacted portion of the Exhibits D-F corresponds to a date prior to May 14, 1993." In addition, Exhibits A-D submitted herewith show that due diligence existed from prior to May 14, 1993, to May 18, 1993.

Specifically, Exhibits A-D show that the Applicant and/or Applicant's attorney worked on the preparation of the patent application (that later issued as U.S. Patent No. 5,400,020) from at least May 10, 1993, to May 18, 1993, the effective filing date of the present application. See *Bey v. Kollonitsch*, 231 U.S.P.Q. 967, 969 (Fed. Cir. 1986) ("Clearly, reasonable diligence can be shown if it is established that the attorney worked reasonably hard on the particular application in question during the continuous critical period."). In this regard, the following events occurred between May 10, 1993, and May 18, 1993, showing continuous diligence on the part of the applicant during this time period:

> on May 10, 1993, attorney Scott Horstemeyer, on behalf of Applicant, revised the claims of the aforementioned patent application and met with the Applicant and co-inventors (regarding parent application that issued as U.S. Patent No. 5,400,020) for about 2.5 hours;
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> on May 11, 1993, the attorney spent about 5.1 hours revising the aforementioned patent application, preparing the formality documents (*i.e.*, Combined Declaration and Power of Attorney, Small Entity Statement, and Assignment), and drafting a letter to the inventors forwarding the final version of the application and the formality documents for their review and signature;
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> on May 12, 1993, the attorney reviewed and sent the letter to the inventor via U.S. mail, a copy of which is submitted herewith as Exhibit D, along with the final version of the aforementioned patent application and formality documents (*i.e.*, Combined

Declaration and Power of Attorney, Small Entity Statement, and Assignment) that needed to be signed by the inventors;

between May 13, 1993, and May 15, 1993, the Applicant received and reviewed for accuracy the final version of the application and the formality documents, signed the formality documents (and had the Assignment notarized), and mailed the application and the formality documents back to the attorney;

May 15, 1993 was a Saturday, and May 16, 1993, was a Sunday (no mail on this day); and

on May 17, 1993, the attorney received the application and formality documents from the inventors, had a conversation with the draftsman regarding the formal drawings, reviewed these documents, prepared the application transmittal cover sheet and return post card for the application and formality documents, and filed the application and related documents; the attorney billed about .6 hours for the aforementioned services.

Accordingly, Applicant submits that continuous due diligence is established for at least the time period from at least May 10, 1993, to the effective filing date of the present invention, as defined by claims 1-14, 27, 28, 31-35, 37-41, 43-48, and 49. As a result, the '770 and '444 patents are not proper prior art references under 35 U.S.C. §102(a) or 102(e), and Applicant respectfully submits that the rejections to the foregoing claims should be withdrawn.

Response to §103 Rejections

Claims 36, 42, and 48

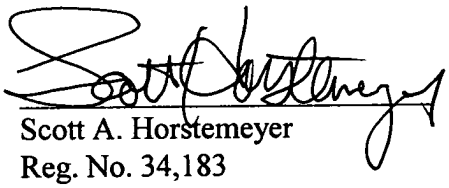
Claims 36, 42, and 48 presently stand rejected under 35 U.S.C. §103 as purportedly being obvious to the '770 patent, and in the alternative, the '444 patent. However, Applicant submits that the present invention, as defined by claims 36, 43, and 48, claims priority to and is supported by U.S. Patent No. 5,400,020. For the same reasons set forth hereinabove in the arguments for allowance of pending claims 1-14, 27, 28, 31-35, 37-41, 43-47, and 49, Applicant submits that the '770 and '444 patents are not valid prior art references and that the rejections to pending claims 36, 42, and 48 should, therefore, be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted ,

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.

By: 

Scott A. Horstemeyer
Reg. No. 34,183

100 Galleria Parkway, N.W.
Suite 1500
Atlanta, Georgia 30339
(770) 933-9500